

THE  
GENERAL STATUTES

OF THE  
STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated  
All General Laws of the State in Force December 31, 1894

COMPILED AND EDITED BY  
HENRY B. WENZELL, Assisted by EUGENE F. LANE

WITH ANNOTATIONS BY  
FRANCIS B. TIFFANY and Others

AND A GENERAL INDEX BY THE EDITORIAL STAFF OF THE NATIONAL  
REPORTER SYSTEM

---

COMPLETE IN TWO VOLUMES

---

VOL. 2

CONTAINING

Sections 4822 to 8054 of the General Statutes, and the General Index

---

ST. PAUL, MINN.  
WEST PUBLISHING CO.

1894

## CHAPTER III.

## DEMURRERS.

**§ 7291. Pleadings by defendant.**

The only pleading on the part of the defendant is a demurrer or a plea.  
(G. S. 1866, c. 111, § 1; G. S. 1878, c. 111, § 1.)

See *State v. Brecht*, 41 Minn. 50, 52, 42 N. W. Rep. 602.

**§ 7292. When to be made.**

Both the demurrer and the plea shall be put in in open court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

(G. S. 1866, c. 111, § 2; G. S. 1878, c. 111, § 2.)

**§ 7293. Grounds of demurrer.**

The defendant may demur to the indictment when it appears from the face thereof, either,

First. That the grand-jury by which it was found had no legal authority to inquire into the offence charged, by reason of its not being within the local jurisdiction of the county;

Second. That it does not substantially conform to the requirements of sections one, two, three and four, of chapter one hundred and eight, as the same are qualified by section ten of the same chapter, or was not found within the time prescribed by section eighteen;

Third. That more than one offence is charged in the indictment, except in cases where it is allowed by statute;

Fourth. That the facts stated do not constitute a public offence;

Fifth. That the indictment contains any matter which, if true, would constitute a legal justification or excuse of the offence charged, or other legal bar to the prosecution.

(G. S. 1866, c. 111, § 3; G. S. 1878, c. 111, § 3.)

**Subd. 8.** An indictment charging defendant with maintaining a building which overhangs a public street, and endangers the safety of people passing thereon, and with permitting to remain in said building large quantities of filth, emitting offensive stenches, dangerous to the public health, is demurrable, as charging two offenses. *Chute v. Minnesota*, 19 Minn. 271, (Gil. 230.)

See *State v. Wood*, 13 Minn. 121, (Gil. 112.)

**Subd. 4.** A count in an indictment held bad, as not alleging acts, circumstances, and facts constituting an offense. *State v. McIntyre*, 19 Minn. 93, (Gil. 65.)

**§ 7294. Requisites of demurrer.**

The demurrer shall be in writing, signed either by the defendant or his counsel; it shall distinctly specify the ground of objection to the indictment, or it may be disregarded.

(G. S. 1866, c. 111, § 4; G. S. 1878, c. 111, § 4.)

**§ 7295. When to be heard.**

Upon the demurrer being filed, the objection presented thereby shall be heard, either immediately, or at such time as the court may appoint.

(G. S. 1866, c. 111, § 5; G. S. 1878, c. 111, § 5.)

**§ 7296. Judgment on demurrer.**

Upon considering the demurrer, the court shall give judgment, either allowing or disallowing it, and an order to that effect shall be entered upon the minutes.

(G. S. 1866, c. 111, § 6; G. S. 1878, c. 111, § 6.)

**§ 7297. Proceedings on allowance of demurrer.**

If the demurrer is allowed, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offence, unless

(1909)

the court allows an amendment where the defendant will not be unjustly prejudiced thereby, or, being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, directs the case to be resubmitted to the same or another grand jury.

(G. S. 1866, c. 111, § 7; G. S. 1878, c. 111, § 7.)

Section 7, c. 108, Comp. St., authorizing the court, upon demurrer, to amend an indictment, "where the defendant will not be unjustly prejudiced thereby," permits amendments as to matters of form only, and not as to matters of substance. Inserting the name of the county in which the offense was committed is not such an amendment as is permitted under such section. *State v. Armstrong*, 4 Minn. 335, (Gil. 251.)

See *State v. Comfort*, 22 Minn. 271, 272.

**§ 7298. Defendant discharged, when.**

If the court does not allow an amendment, or direct the case to be resubmitted, the defendant, if in custody, shall be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money shall be refunded to him.

(G. S. 1866, c. 111, § 8; G. S. 1878, c. 111, § 8.)

**§ 7299. Proceedings when case is submitted anew.**

If the court directs that the case be submitted anew, the same proceedings shall be had thereon as are prescribed in sections six and seven of chapter one hundred and ten.

(G. S. 1866, c. 111, § 9; G. S. 1878, c. 111, § 9.)

**§ 7300. If demurrer is disallowed, defendant may plead.**

If the demurrer is disallowed or the indictment amended, the court shall permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the court may allow. If he does not plead, judgment shall be pronounced against him.

(G. S. 1866, c. 111, § 10; G. S. 1878, c. 111, § 10.)

For good reason the court may allow the defendant to plead after the time originally fixed. *State v. Abrisch*, 42 Minn. 202, 43 N. W. Rep. 1115.

**§ 7301. What objections must be taken by demurrer.**

When the objections mentioned in section three appear upon the face of the indictment, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a public offence, may be taken at the trial, under the plea of not guilty, and in arrest of judgment.

(G. S. 1866, c. 111, § 11; G. S. 1878, c. 111, § 11.)

See *State v. Loomis*, 27 Minn. 521, 525, 8 N. W. Rep. 753; *State v. Reckards*, 21 Minn. 47, 49.

(1910)